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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/043,824	01/11/2002	Joseph Rustad	16010-05885	7891

758 7590 02/25/2005

FENWICK & WEST LLP  
SILICON VALLEY CENTER  
801 CALIFORNIA STREET  
MOUNTAIN VIEW, CA 94041

EXAMINER
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JEAN GILLES, JUDE

ART UNIT	PAPER NUMBER
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2143

DATE MAILED: 02/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/043,824	RUSTAD, JOSEPH	
	<b>Examiner</b>	<b>Art Unit</b>	
	Jude J Jean-Gilles	2143	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 11 January 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01/11/02 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

This office action is responsive to communication filed on 01/11/2002.

#### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. **Claims 1-32** are rejected under 35 U.S.C. 102(e) as being anticipated by Qin et al (Qin), Patent No. 6,393,480 B1.

Regarding **claim 1**, Qin discloses a method comprising:

determining thread values associated with each thread of a plurality of threads  
(*column 4, lines 41-53*);

determining a delay value for a network (*fig. 3, items 304; column 5, lines 3-9; column 8, lines 1-21*);

determining network flow factors (*column 9, lines 1-38*); and  
determining a duration of each thread based on the thread values, the delay value and the network flow factors (*fig. 5A-B; column 5, lines 3-67*).

Regarding **claim 2**, Qin discloses the method of claim 1, further comprising:

adjusting the thread values associated with each thread based on the network flow factors (*column 9, lines 3-67; column 4, lines 41-67*).

Regarding **claim 3**, Qin discloses the method of claim 2, wherein determining a duration comprises determining the duration of each thread based on the adjusted thread values and the delay values (*fig. 5A-B; column 5, lines 3-67*).

Regarding **claim 4**, Qin discloses the method of claim 2, wherein adjusting the thread values associated with each thread further comprises modifying a number of turns of the thread (*column 7, lines 58-67; column 8, lines 1-61*).

Regarding **claim 5**, Qin discloses the method of claim 1, further comprising: determining a total response time for the plurality of threads based on the durations of the threads (*column 4, lines 54-67; column 5, lines 1-9*).

Regarding **claim 6**, Qin discloses the method of claim 1, wherein the network comprises a plurality of delay source values, each delay source value associated with a corresponding delay source, and the delay value for the network is determined based on the plurality of delay source values (*column 4, lines 54-67; column 5, lines 1-40*).

Regarding **claim 7**, Qin discloses the method of claim 1, wherein the thread values associated with each thread comprise an average packet size and an average node sending time (*column 5, lines 41-67*).

Regarding **claim 8**, Qin discloses the method of claim 1, wherein determining network flow factors further comprises generating a histogram of node sending time, and determining the network flow factors based on the histogram (*fig. 2, items 200-214*;

*fig. 5A, items 500-505; column 5, lines 41-67; column 6, lines 1-41; column 6, lines 42-67).*

### ***Similar Claims***

3. **Claim 9** lists all the same elements of **claim 1**, but in apparatus form rather than method form. Therefore, the supporting rationale of the rejection to **claim 1** applies equally as well to **claim 9**.

**Claim 10** lists all the same elements of **claim 2**, but in apparatus form rather than method form. Therefore, the supporting rationale of the rejection to **claim 2** applies equally as well to **claim 10**.

**Claim 11** lists all the same elements of **claim 3**, but in apparatus form rather than method form. Therefore, the supporting rationale of the rejection to **claim 3** applies equally as well to **claim 11**.

**Claim 12** lists all the same elements of **claim 4**, but in apparatus form rather than method form. Therefore, the supporting rationale of the rejection to **claim 4** applies equally as well to **claim 12**.

**Claim 13** lists all the same elements of **claim 5**, but in apparatus form rather than method form. Therefore, the supporting rationale of the rejection to **claim 5** applies equally as well to **claim 13**.

**Claim 14** lists all the same elements of **claim 6**, but in apparatus form rather than method form. Therefore, the supporting rationale of the rejection to **claim 6** applies equally as well to **claim 14**.

**Claim 15** lists all the same elements of **claim 7**, but in apparatus form rather than method form. Therefore, the supporting rationale of the rejection to **claim 7** applies equally as well to **claim 15**.

**Claim 16** list all the same elements of **claim 8**, but in apparatus form rather than method form. Therefore, the supporting rationale of the rejection to **claim 8** applies equally as well to **claim 16**.

**Claim 17** lists all the same elements of **claim 1**, but in computer readable medium form rather than method form. Therefore, the supporting rationale of the rejection to **claim 1** applies equally as well to **claim 17**.

**Claim 18** lists all the same elements of **claim 2**, but in computer readable medium form rather than method form. Therefore, the supporting rationale of the rejection to **claim 2** applies equally as well to **claim 18**.

**Claim 19** lists all the same elements of **claim 3**, but in computer readable medium form rather than method form. Therefore, the supporting rationale of the rejection to **claim 3** applies equally as well to **claim 19**.

**Claim 20** lists all the same elements of **claim 4**, but in computer readable medium form rather than method form. Therefore, the supporting rationale of the rejection to **claim 4** applies equally as well to **claim 20**.

**Claim 21** lists all the same elements of **claim 5**, but in computer readable medium form rather than method form. Therefore, the supporting rationale of the rejection to **claim 5** applies equally as well to **claim 21**.

**Claim 22** lists all the same elements of **claim 6**, but in computer readable medium form rather than method form. Therefore, the supporting rationale of the rejection to **claim 6** applies equally as well to **claim 22**.

**Claim 23** lists all the same elements of **claim 7**, but in computer readable medium form rather than method form. Therefore, the supporting rationale of the rejection to **claim 7** applies equally as well to **claim 23**.

**Claim 24** lists all the same elements of **claim 8**, but in computer readable medium form rather than method form. Therefore, the supporting rationale of the rejection to **claim 8** applies equally as well to **claim 24**.

**Claim 25** lists all the same elements of **claim 1**, but in apparatus with value logic form rather than method form. Therefore, the supporting rationale of the rejection to **claim 1** applies equally as well to **claim 25**.

**Claim 26** lists all the same elements of **claim 2**, but in apparatus with value logic form rather than method form. Therefore, the supporting rationale of the rejection to **claim 2** applies equally as well to **claim 26**.

**Claim 27** lists all the same elements of **claim 3**, but in apparatus with value logic form rather than method form. Therefore, the supporting rationale of the rejection to **claim 3** applies equally as well to **claim 27**.

**Claim 28** lists all the same elements of **claim 4**, but in apparatus with value logic form rather than method form. Therefore, the supporting rationale of the rejection to **claim 4** applies equally as well to **claim 28**.

**Claim 29** lists all the same elements of **claim 5**, but in apparatus with value logic form rather than method form. Therefore, the supporting rationale of the rejection to **claim 5** applies equally as well to **claim 29**.

**Claim 30** lists all the same elements of **claim 6**, but in apparatus with value logic form rather than method form. Therefore, the supporting rationale of the rejection to **claim 6** applies equally as well to **claim 30**.

**Claim 31** lists all the same elements of **claim 7**, but in apparatus with value logic form rather than method form. Therefore, the supporting rationale of the rejection to **claim 7** applies equally as well to **claim 31**.

**Claim 32** list all the same elements of **claim 8**, but in apparatus with value logic form rather than method form. Therefore, the supporting rationale of the rejection to **claim 8** applies equally as well to **claim 32**.



**Conclusion**

4. Any inquiry concerning this communication or earlier communications from examiner should be directed to Jude Jean-Gilles whose telephone number is (571) 272-3914.

The examiner can normally be reached on Monday-Thursday and every other Friday from 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley, can be reached on (571) 272-3923. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3719.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

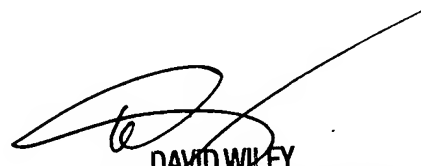
Jude Jean-Gilles

Patent Examiner

Art Unit 2143

JJG

February 18, 2005

  
DAVID WILEY  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100

